
HOUSE BILL No. 1070

DIGEST OF INTRODUCED BILL

Citations Affected: IC 8-6-3-1.

Synopsis: Railroad grade crossing separation projects. Restates a reference to the percentage of cost a railroad is required to pay for a railroad grade crossing separation.

Effective: July 1, 2005.

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January 6, 2005, read first time and referred to Committee on Roads and Transportation.

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Introduced

First Regular Session 114th General Assembly (2005)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2004 Regular Session of the General Assembly.

HOUSE BILL No. 1070

A BILL FOR AN ACT to amend the Indiana Code concerning utilities and transportation.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 8-6-3-1 IS AMENDED TO READ AS FOLLOWS
2 [EFFECTIVE JULY 1, 2005]: Sec. 1. (a) Whenever the separation of
3 grades at the intersection of a railroad ~~or railroads~~ (as defined in
4 IC 8-3-1-2) and a public street or highway is constructed, the railroad
5 ~~or railroads~~ shall pay five ~~(5)~~ percent **(5%)** of the cost of the grade
6 separation as provided in this chapter.
7 (b) This chapter ~~shall apply~~ **applies** to:
8 (1) an existing crossing;
9 (2) a new crossing; or
10 (3) the reconstruction of an existing grade separation.
11 (c) If more than one (1) railroad (as defined in IC 8-3-1-2) is
12 involved in a separation, the railroads involved shall divide the amount
13 to be paid by the railroads by agreement between the railroads. If the
14 railroads fail to agree, the circuit court of the county in which the
15 crossing is located shall have jurisdiction, upon the application of a
16 party, to determine the division of the amount to be paid by the
17 railroads. The decision of the court is final, unless one (1) or more

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parties ~~deeming themselves~~ aggrieved by the decision of the court ~~shall~~
~~appeal therefrom~~ **appeal** to the court of appeals of Indiana within thirty
 (30) days, or within additional time not exceeding ninety (90) days, as
 may be granted by the circuit court. The appeal shall be taken in
 substantially the same manner as an appeal in a civil case from the
 circuit court.

(d) If a grade separation ~~shall involve~~ **involves**:

(1) a state highway that is a part of the state highway system of
 Indiana; or

(2) a street or highway selected by the Indiana department of
 transportation as a route of a highway in the state highway
 system;

the state, out of the funds of the Indiana department of transportation
 or funds appropriated for the use of the Indiana department of
 transportation, shall pay ninety-five percent (95%) of the cost of the
 grade separation.

(e) Before the Indiana department of transportation ~~shall proceed~~
proceeds with a grade separation within a city or town, the Indiana
 department of transportation ~~shall must~~ first obtain the consent of the
 city, by a resolution adopted by the board or officials of the city having
 jurisdiction over improvement of the streets of the city, and any
 material modification of the plans upon which the consent was granted
 shall first be approved by the city by a similar resolution.

(f) If ~~such a~~ grade separation is:

(1) on a highway or street not a part of the highways under the
 jurisdiction of the Indiana department of transportation; or

(2) a part of a route selected by it, **the Indiana department of
 transportation**, but is within ~~any a~~ a city or town of the state;

the city or town shall pay one-half (1/2) of ninety-five percent (95%)
 of the total ~~of such~~ cost and the county in which the crossing is located
 shall be liable for and pay one-half (1/2) of the ninety-five percent
 (95%).

(g) If a grade separation that:

(1) involves a state highway that is a part of the state highway
 system of Indiana; or

(2) a street or highway selected by the Indiana department of
 transportation as a route of a highway in the state highway
 system;

necessitates the grade separation on other highways or streets, not a
 part of the highways under the jurisdiction of the Indiana department
 of transportation, but within ~~any a~~ a city of the state of Indiana, then of
 the total cost of the grade separation on a highway or street not under

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the jurisdiction of the Indiana department of transportation but necessitated by the grade separation involving a highway or street which is a part of the state highway system, the city shall pay one-fourth (1/4) of ninety-five percent (95%) and the county in which the crossing is located shall be liable for and pay one-fourth (1/4) of the ninety-five percent (95%) of the total ~~of the~~ costs and the state out of the funds of the Indiana department of transportation or funds appropriated for the use of the Indiana department of transportation, shall be liable for and pay one-half (1/2) of the remaining portion.

(h) If a crossing is not within any city or town and does not involve a highway under the jurisdiction of the Indiana department of transportation, then the county in which the crossing is located shall pay the ninety-five percent (95%) of the total cost which is not paid by the railroad or railroads.

(i) The division of the cost of grade separation applies when the grade separation replaces and eliminates an existing grade crossing at which active warning devices are in place or ordered to be installed by a state regulatory agency, but when the grade separation does not replace nor eliminate an existing grade crossing the state, county or municipality, as the case may be, shall bear and pay one hundred percent (100%) of the cost of the grade separation.

(j) In estimating and computing the cost of the grade separation, there shall be considered as a part of costs all expenses reasonably necessary for preliminary engineering, rights-of-way and all work required to comply with the plans and specifications for the work, including all changes in the highway and the grade thereof and the approaches to the grade separation, as well as all changes in the roadbed, grade, rails, ties, bridges, buildings, and other structural changes in a railroad as may be necessary to effect the grade separation and to restore the railroad facilities ~~aforsaid~~ to substantially the same condition as before the separation.

(k) The required railroad share of the cost shall be based on the costs for preliminary engineering, right-of-way, and construction within the limits described below:

(1) Where a grade crossing is eliminated by grade separation, the structure and approaches for the number of lanes on the existing highway and in accordance with the current design standards of the governmental entity having jurisdiction over the highway involved.

(2) Where another facility, such as a highway or waterway, requiring a bridge structure is located within the limits of a grade separation project, the estimated cost of a theoretical structure and

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approaches as described under subdivision (1) to eliminate the railroad-highway grade crossing without considering the presence of the waterway or other highway.

(3) Where a grade crossing is eliminated by railroad or highway relocation, the actual cost of the relocation project, or the estimated cost of a structure and approaches as described under subdivision (1), whichever is less.

(1) If the Indiana department of transportation or any city, town, or county is unable to reach an agreement with a railroad company after determining that construction or reconstruction of a grade separation, which replaces or eliminates the need for a grade crossing, is necessary to protect travelers on the roads and streets of the state, the appropriate unit or combination of units of government shall give a written notice of its intention to proceed with the construction or reconstruction of a grade separation to the superintendent or regional engineer of the railroad company. The notice of intention shall be made by the adoption of a resolution stating the need for the grade separation. If, after thirty (30) days, the railroad has not agreed to a division of inspections, plans and specifications, the number and type of jobs to be completed by each agency, a division of costs, and other necessary conditions, the Indiana department of transportation, city, town, or county may proceed with the grade separation exercising any and all of its powers to construct or reconstruct a bridge and, notwithstanding other provisions of this chapter, may pay for up to one hundred percent (100%) of the cost of the project. If the railroad is unable, for good cause, to pay the share of the cost required by this section, the city, town, or county may certify the amount owed by the railroad to the county auditor who shall prepare a special tax duplicate to be collected and settled for by the county treasurer in the same manner and at the same time as property taxes are collected except that such tax assessment shall not authorize a payment or credit from the property tax replacement fund created by IC 6-1.1-21. However, before the Indiana department of transportation, city, town, or county undertakes to do the work themselves they shall notify an agent of the railroad as to the time and place of the work.

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